

17:07:23

1 UNITED STATES DISTRICT COURT

2 WESTERN DISTRICT OF NEW YORK

3

4

5

6 - - - - - X
UNITED STATES OF AMERICA,) 21CR135
)

7 vs.

8

9 MICHAEL REGAN, Buffalo, New York
Defendant. August 26, 2021

10 2:00 p.m.

11 - - - - - X

12 **ARRAIGNMENT/DETENTION HEARING**13 **Transcribed from an electronic recording device**

14

15 TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE H. KENNETH SCHROEDER
16 UNITED STATES MAGISTRATE JUDGE

17

18 JAMES P. KENNEDY, ESQ.
United States Attorney
19 BY: CAITLIN M. HIGGINS, ESQ.
Assistant United States Attorney
20 138 Delaware Avenue
Buffalo, New York 14202

21

22 MARIANNE MARIANO, ESQ.
United States Federal Public Defender
23 BY: FONDA DAWN KUBIAK, ESQ.
Assistant Federal Public Defender
24 300 Pearl Street, Suite 200
Buffalo, New York 14202

25

26 COURT REPORTER: Karen J. Clark, Official Court Reporter
Karenclark1013@AOL.com
100 State Street
27 Rochester, New York 14614

1 USA VS. M. REGAN
2
3 P R O C E E D I N G
4 * * *

17:07:24 5 THE CLERK: This is United States versus
17:07:25 6 Michael Regan, docket 21CR135. This is the date set for
17:07:31 7 the arraignment. Assistant United States Attorney
17:07:34 8 Caitlin Higgins appearing on behalf of the government;
17:07:36 9 and Assistant Federal Public Defender Fonda Kubiak
17:07:41 10 appearing with defendant.

17:07:41 11 MAGISTRATE JUDGE SCHROEDER: Good morning.

17:07:42 12 MS. KUBIAK: Good morning, your Honor.

17:07:43 13 MS. HIGGINS: Good morning, Judge.

17:07:44 14 MAGISTRATE JUDGE SCHROEDER: Ms. Kubiak,
17:07:51 15 have you and Mr. Regan received a copy of the
17:07:53 16 indictment?

17:07:54 17 MS. KUBIAK: We have, your Honor. We
17:07:55 18 acknowledge receipt, waive a further reading, enter a
17:07:58 19 plea of not guilty at this time.

17:08:02 20 MAGISTRATE JUDGE SCHROEDER: All right. Any
17:08:04 21 change in facts and circumstances to warrant
17:08:08 22 reconsideration of this Court's order of detention?

17:08:11 23 MS. KUBIAK: Yes, Judge. We could would ask
17:08:13 24 the Court to reconsider its order of detention. Mr.
17:08:16 25 Regan is requesting a new detention hearing as his

1 USA VS. M. REGAN

17:08:20 2 position is that there is information the Court did not
17:08:24 3 consider previously when we last argued bail.

17:08:30 4 MAGISTRATE JUDGE SCHROEDER: Was it
17:08:30 5 information that was learned or developed after?

17:08:35 6 MS. KUBIAK: His position, Judge, is that
17:08:37 7 it's based upon his review of the discovery that has
17:08:40 8 been provided thus far and that there is aspects with
17:08:47 9 respect to his defense that have not been presented.

17:08:57 10 MAGISTRATE JUDGE SCHROEDER: Well, the other
17:08:58 11 changed circumstance is we have a grand jury that has
17:09:01 12 now found probable cause for the charges to be made
17:09:04 13 against Mr. Regan.

17:09:07 14 Does the government have any input on this
17:09:09 15 issue of a detention hearing?

17:09:10 16 MS. HIGGINS: Judge, we would ask that he
17:09:12 17 remained detained. This is a presumption case pursuant
17:09:15 18 to 18 U.S.C. 3142(e)(3)(E). And based on the indictment
17:09:23 19 that charges additional crimes than what we charged in
17:09:26 20 the actual Complaint, we believe that the nature and
17:09:29 21 circumstances of the crimes charged are extremely
17:09:31 22 serious and weigh in favor of detention. We discussed
17:09:36 23 in the Complaint, but, Judge, not only does Mr. Regan
17:09:39 24 discuss having sex with the minor victim listed in the
17:09:44 25 Complaint or listed in the indictment, but in the

1 USA VS. M. REGAN

17:09:45 2 Complaint, we also detailed that Mr. Regan discussed
17:09:48 3 with the minor victim how he had sex with other minors
17:09:52 4 and discussed wanting to have sex with other minors.
17:09:55 5 And when referring to sex or when referring to his
17:09:59 6 having sex with victim's minor friend last summer, Mr.
17:10:17 7 Regan wrote, "Not going to lie, getting sucked off and
17:10:22 8 eating her pussy and fucking her was fun. That was the
17:10:34 9 first time I ever did anything with someone that young."
17:10:38 10 He was discussing having relations with a minor previous
17:10:51 11 to the victim charged in the indictment, and he also
17:10:54 12 discusses wanting to engage in sex with other minors,
17:10:58 13 including his nieces. Judge, we find that he is a
17:11:02 14 danger to the community. We do not believe that any
17:11:04 15 conditions are going to mitigate, including ankle
17:11:08 16 bracelet or limiting his electronics. Quite frankly,
17:11:14 17 getting electronics in this day and age is so easy, it's
17:11:18 18 one click on Amazon, and he can have a new phone and his
17:11:22 19 wife can do that, anyone can do that. So we don't
17:11:25 20 believe there is any condition or combination of
17:11:27 21 conditions that is going to mitigate the risk.
17:11:30 22 And we also think that given the very
17:11:40 23 serious penalties he is facing, including the mandatory
17:11:43 24 minimum that he faces in this case makes him a flight
17:11:47 25 risk. I mean, he has a mandatory minimum of 15 years

1 USA VS. M. REGAN

17:11:51 2 for production, 10 years for enticement, which also
17:11:55 3 carries with it a max penalty of life. These are
17:11:58 4 extremely serious charges, and that makes him a flight
17:12:01 5 risk in the government's position. We don't believe
17:12:04 6 there is a change in circumstances. The government has
17:12:07 7 not heard what the change of circumstances may be. If
17:12:10 8 the defense wants to make a proffer, that is fine. We
17:12:16 9 don't believe there is anything that has changed the
17:12:24 10 circumstances.

17:12:25 11 MAGISTRATE JUDGE SCHROEDER: That is the
17:12:33 12 primary issue. What are the changed facts and
17:12:36 13 circumstances?

17:12:36 14 MS. KUBIAK: Judge, Mr. Regan's position is
17:12:40 15 that either I didn't or wasn't in a position to fully
17:12:43 16 vet out the nature and circumstances of the offense as
17:12:46 17 well as his defenses and mitigating what Ms. Higgins
17:12:52 18 just set forth as the nature and circumstances
17:12:55 19 surrounding the indictment, so I now have had an
17:12:59 20 opportunity, as well as he, to review the discovery and
17:13:03 21 he is asking that I put a full-throttle defense before
17:13:09 22 the Court disputing all of the allegations that Ms.
17:13:13 23 Higgins just set forth, and I can do that now. That
17:13:15 24 would be also part of my proffer with respect to
17:13:21 25 release. His position is that he is being falsely

1 USA VS. M. REGAN

17:13:24 2 accused, being railroaded, that he is being framed, that
17:13:30 3 he denies having any contact other than non-sexual
17:13:35 4 contact with this person on SnapChat. He never
17:13:41 5 discussed having relations with other individuals. We
17:13:44 6 have been informed that the other individual that Ms.
17:13:47 7 Higgins referred to had been interviewed and had denied
17:13:52 8 actually knowing the defendant and that that information
17:13:56 9 contained in the discovery was inaccurate. He is asking
17:14:15 10 me to take a position that the statement that he
17:14:17 11 provided to law enforcement was coerced, that it was not
17:14:21 12 knowing and voluntary, and that the information that was
17:14:25 13 provided to law enforcement during that statement was a
17:14:29 14 result of him being sleep deprived, disoriented, out in
17:14:34 15 the freezing cold in 30 degree weather for a lengthy
17:14:38 16 period of time, and then being coerced with respect to
17:14:41 17 the statements that were made. And he denies that the
17:14:44 18 information contained in the statements are true and
17:14:46 19 accurate. He also is indicating and has authorized me
17:14:55 20 to disclose to the Court that his position is that he
17:15:04 21 has an alibi defense with respect to the date in
17:15:06 22 question in the indictment with contact with the minor
17:15:10 23 victim. So, in light of those things, those are the
17:15:14 24 change in circumstances that he wants me to put forth
17:15:17 25 for this Court and argue for his release.

1 USA VS. M. REGAN

17:15:20 2 His position is that he is not a flight
17:15:22 3 risk. He is a lifelong resident of Western New York.
17:15:26 4 He has two young children. His daughter is starting
17:15:29 5 kindergarten, and, therefore, he simply wants to be home
17:15:33 6 to be able to take care of his family. He is willing to
17:15:37 7 abide by any and all conditions, have an absolute
17:15:40 8 prohibition from any electronics in the household
17:15:44 9 whatsoever, be incarcerated in his own home, but for he
17:15:51 10 has a loss of use appointment on September 26th, 2021
17:15:57 11 where he is eligible to ask for Workers' Compensation as
17:16:05 12 a result of an injury that was sustained on April 7,
17:16:08 13 2020, so he would ask to be let out of the house solely
17:16:11 14 to be able to undertake that loss of use appointment.
17:16:16 15 His family is financially devastated and struggling,
17:16:21 16 and, as a result of his absence, the family's hardship
17:16:25 17 has been enormous. He has no prior criminal history
17:16:29 18 except for one DWI back in 2009, in which he was
17:16:36 19 successfully discharged and complied with the conditions
17:16:41 20 of probation. So, in light of his vehement denial of
17:16:47 21 the allegations in the indictment and his position is
17:16:49 22 that he has an alibi defense and that he is being
17:16:53 23 framed, I would ask the Court to release him on a
17:16:55 24 multitude of combination of conditions that can
17:16:59 25 ameliorate both risk of flight. He could post a

1 USA VS. M. REGAN

17:17:02 2 monetary bond, potentially. There might be property
17:17:05 3 that could be posted that would ensure his appearance
17:17:08 4 and future court appearances. In fact, he has no
17:17:11 5 history of failure to appear. He was a corrections
17:17:15 6 officer for 14 years, Judge. He certainly knows the
17:17:17 7 consequences should he fail to appear. And he certainly
17:17:23 8 doesn't want to put his life, his family's life in
17:17:27 9 further peril with respect to financial hardships if he
17:17:30 10 were to flee. And with respect to danger to the
17:17:35 11 community, I have in other cases had the Court impose a
17:17:43 12 zero electronic prohibition that would ameliorate the
17:17:51 13 concern that Ms. Higgins identified that Mr. Regan would
17:17:54 14 get access to electronics and try and seek out or
17:17:57 15 communicate with others.

17:17:59 16 MS. HIGGINS: May I respond?

17:18:00 17 MAGISTRATE JUDGE SCHROEDER: Certainly.

17:18:01 18 MS. HIGGINS: First of all, the fact that
17:18:04 19 the defendant vehemently denies the allegations in the
17:18:08 20 indictment does not merit -- does not qualify as a
17:18:13 21 change in circumstances. In this case, the evidence is
17:18:17 22 overwhelming. We have the text messages from this
17:18:22 23 Textnow app, which, based on law enforcement work, was
17:18:25 24 traced back to Mr. Regan. That hasn't changed since the
17:18:29 25 Complaint. The Complaint forms the basis. The evidence

1 USA VS. M. REGAN

17:18:32 2 identified in the Complaint forms the basis of the
17:18:35 3 indictment. That hasn't changed in any way, shape or
17:18:37 4 form. The text messages made clear that Mr. Regan was
17:18:41 5 communicating with this minor victim, who was 13,
17:18:45 6 explicitly requesting photographs and videos, which she
17:18:49 7 did send, which the minor victim sent and the text
17:18:52 8 messages did make clear that the two met up on August
17:18:56 9 28th, they met up, and then afterwards, exchanged text
17:19:01 10 messages about the sexual contact. And, in fact, they
17:19:04 11 continued to talk. So the evidence is clear.

17:19:06 12 In addition, with regard to his family and
17:19:08 13 daughter entering kindergarten, there was a minor who
17:19:11 14 was also identified in the indictment, who, for purposes
17:19:15 15 of this hearing, will be identified as one of his
17:19:18 16 children, on his phone, there was a picture of that. He
17:19:22 17 produced a picture of child pornography of his infant
17:19:27 18 daughter, at the time, she was 1 or 2. The government
17:19:30 19 does not feel that releasing him back to his family in
17:19:42 20 which he has already committed the crimes alleged in the
17:19:45 21 indictment involving that infant is responsible or
17:19:48 22 appropriate in this case. In addition, there is
17:19:51 23 evidence that this defendant also threatened the other
17:19:55 24 minor victim and told her that if she told anyone what
17:19:58 25 happened between the two of them, that he would come to

1 USA VS. M. REGAN

17:20:01 2 her house. The government believes that that alone
17:20:05 3 demonstrates that he is a danger to the community, quite
17:20:08 4 frankly, a danger to a witness in this case. He also
17:20:36 5 requested that the minor victim delete messages so there
17:20:39 6 was no evidence of this.

17:20:40 7 Ms. Kubiak is right, he is a corrections
17:20:43 8 officer, and he knew exactly what to do, delete evidence
17:20:46 9 and also threaten a witness who is 13 years old and
17:20:49 10 wouldn't know any better to say, "Don't tell anyone or
17:20:53 11 else I'm coming to your house."

17:20:55 12 The DWI conviction that this defendant had
17:21:07 13 resulted in a manslaughter charge as well. So we do not
17:21:10 14 feel that this defendant should be released. We feel he
17:21:13 15 is a danger to the community. He has demonstrated as
17:21:16 16 such in his conduct as charged in this indictment. And
17:21:29 17 we also believe that, given the charges in this case, he
17:21:32 18 may have showed up to prior court appearances, he has
17:21:35 19 never been charged with anything like this where there
17:21:39 20 is a 15 year mandatory minimum, a maximum of life in
17:21:42 21 jail. These are very serious charges. So we do believe
17:21:45 22 he is a flight risk and we believe he is a danger to the
17:21:49 23 community. We don't believe releasing him back into the
17:21:52 24 community and giving him a shot to communicate with the
17:21:55 25 victim again in any way, shape or form is merited in

1 USA VS. M. REGAN

17:21:58 2 this case.

17:21:59 3 MS. KUBIAK: Judge, Mr. Regan wants me to
17:22:01 4 inform the Court that he had 28,000 photographs on his
17:22:06 5 phone and the government is citing in Count 1 to one or
17:22:10 6 two images which Mr. Regan vehemently denies constitute
17:22:16 7 child pornography. And he is not a risk to the minor
17:22:21 8 victim identified as his infant daughter in Count 1.
17:22:24 9 And that the e-mail address that the Textnow app went
17:22:30 10 back to does not belong to him. And that someone has
17:22:33 11 hacked into his e-mail, and is engaging in the
17:22:37 12 communications with the minor victim identified in
17:22:42 13 Counts 2 through 4.

17:22:44 14 MS. HIGGINS: Again, Judge, in terms of the
17:22:45 15 communications and the e-mail hacking, that is not a
17:23:05 16 change in circumstance. The communications have been
17:23:07 17 listed in the Complaint from the outset of this case.
17:23:10 18 That is not a change in circumstance. Down the road,
17:23:13 19 maybe that is a defense that the defendant wants to
17:23:15 20 assert. That is not a change in circumstances in terms
17:23:17 21 of detention.

17:23:18 22 In addition, with respect to the image found
17:23:21 23 on the defendant's phone, the image was of the infant
17:23:25 24 girl laying down sleeping, she was partially covered
17:23:29 25 with her vagina exposed. That does constitute child

1 USA VS. M. REGAN

17:23:36 2 pornography and this is not a picture that a parent
17:23:38 3 would typically take of an infant child for any other
17:23:42 4 purpose.

17:23:46 5 MS. KUBIAK: He does not want me to argue
17:23:48 6 anything else at this time, Judge.

17:23:49 7 MAGISTRATE JUDGE SCHROEDER: All right.

17:23:52 8 Once again, it is the government's position to continue
17:23:59 9 to request to have the defendant detained and the
17:24:02 10 defendant's position as to why that application should
17:24:03 11 be denied and the defendant should be granted a release
17:24:07 12 subject to terms and conditions the Court could impose.
17:24:12 13 I must consider all of the facts and circumstances and
17:24:16 14 information made known to the Court in its totality.

17:24:21 15 And in doing that, I, of course, am familiar with the
17:24:24 16 prior proceedings when the defendant appeared before me
17:24:28 17 under a Criminal Complaint, and I heard arguments as to
17:24:34 18 both the government's position as to why the defendant
17:24:38 19 should be detained and the defendant's arguments as to
17:24:42 20 why he should be released and issued my order of
17:24:46 21 detention based on what was known by the Court at that
17:24:50 22 time. The defendant has now asserted that there is a
17:24:53 23 change in the facts and circumstances in this case that
17:24:56 24 would warrant reconsideration of my order of detention.
17:25:01 25 I have basically allowed for a presentation to be made

1 USA VS. M. REGAN

17:25:07 2 on behalf of the defendant for reconsideration of that
17:25:32 3 order of detention by accepting proffers both by the
17:25:38 4 government in further support of its motion to detain
17:25:40 5 the defendant, as well as proffers having been made on
17:25:44 6 behalf of the defendant by his counsel. I have also
17:25:49 7 taken into account the fact that a grand jury has now
17:25:52 8 returned an indictment, and, in doing so, as a matter of
17:25:56 9 law, the grand jury has found there is probable cause
17:26:00 10 for the charges set forth therein to be made against
17:26:03 11 this defendant. I have heard the representations put
17:26:06 12 forth on behalf of the defendant as to why these charges
17:26:10 13 should not be made against him or why they are not
17:26:15 14 valid. Basically, what the defendant is asserting in
17:26:18 15 that regard is his position of innocence. Those
17:26:24 16 assertions as made by the defendant, that he is being
17:26:26 17 framed, that there is a lack of proof or that there has
17:26:33 18 been hacking into his computer and all of the other
17:26:37 19 assertions that have been made on his behalf are all
17:26:40 20 matters that will be fully explored as part of an
17:26:44 21 alleged defense at trial. And in a detention hearing
17:26:48 22 such as this, it is not for this Court to be addressing
17:26:55 23 the issues of guilt or innocence. It's merely this
17:27:00 24 Court's function to determine whether, under the
17:27:02 25 totality of the circumstances the Court is aware of, the

1 USA VS. M. REGAN

17:27:05 2 defendant should be released or should continue to be
17:27:10 3 detained.

17:27:11 4 The charges in the indictment themselves
17:27:13 5 bring into play the provisions contained in the Bail
17:27:17 6 Reform Act and that the presumption created by Congress
17:27:21 7 in that Act applies, that is, those charges are
17:27:27 8 sufficient to raise the presumption of dangerousness to
17:27:31 9 members of the community and the community. Admittedly,
17:27:35 10 the presumption in the Act is a rebuttable presumption.
17:27:40 11 However, what has been presented once again on behalf of
17:27:44 12 the defendant as it was in the original detention
17:27:52 13 hearing does not rise to the level for this Court to
17:27:56 14 consider presumption of dangerousness has been rebutted,
17:28:01 15 especially having the grand jury having heard evidence
17:28:06 16 presented to it has found probable cause for these
17:28:08 17 charges to be made. I find in that, also, in the
17:28:11 18 totality of the circumstances, that there is nothing of
17:28:14 19 substance that would constitute new or changed
17:28:18 20 circumstances that would warrant this Court setting
17:28:22 21 aside its original order of detention. And I find, once
17:28:27 22 again, that the defendant does constitute a danger to
17:28:31 23 the community or members of the community, and,
17:28:34 24 therefore, am continuing to order him to be detained.
17:28:40 25 Now, I want to put in place a scheduling

1 USA VS. M. REGAN

17:28:44 2 order. How much time is the government going to need to
17:28:46 3 provide voluntary discovery material?

17:28:48 4 MS. HIGGINS: Judge, most, if not all, of
17:28:51 5 discovery has been turned over in this case already.
17:28:54 6 But the only thing that the defendant has not gotten, we
17:29:01 7 need the agent to make arrangements to bring certain
17:29:05 8 images to the jail for Mr. Regan. We would like 30 days
17:29:23 9 to arrange that. The agent is on vacation for the next
17:29:27 10 two weeks, as is defense counsel and myself. We would
17:29:32 11 ask for 30 days so that we could have time to arrange
17:29:54 12 with the jail time to bring the image to him. All of
17:29:56 13 the other discovery in the case has been turned over.

17:29:59 14 MAGISTRATE JUDGE SCHROEDER: Any problem
17:29:59 15 with the 30-day period since the defendant is now being
17:30:02 16 detained, Ms. Kubiak?

17:30:04 17 MS. KUBIAK: No, Judge. And that is
17:30:05 18 accurate, there is some logistical things to get access
17:30:09 19 to Mr. Regan with the images.

17:30:11 20 MAGISTRATE JUDGE SCHROEDER: All right. I'm
17:30:12 21 going to give the government, because there is a holiday
17:30:16 22 in that 30-day time period, namely Labor Day, September
17:30:21 23 6th, I'm going to give the government until September
17:30:24 24 30th, 2021 to complete that discovery process.

17:30:30 25 MS. HIGGINS: Thank you, Judge.

1 USA VS. M. REGAN

17:30:41 2 MAGISTRATE JUDGE SCHROEDER: I am once again
17:30:44 3 admonishing the government as follows, as I previously
17:30:47 4 did when the defendant was before me in the initial
17:30:51 5 appearance on the Criminal Complaint, namely, as
17:30:56 6 required by the Due Process Protections Act, Public Law
17:30:56 7 116-182, 134 Statute 894 and Federal Rule of Criminal
17:31:38 8 Procedure 5(f)(1), this Court confirms the United
17:31:38 9 States' obligations to produce all exculpatory evidence
17:31:41 10 to the defendant pursuant to *Brady v. Maryland* 373 U.S.
17:31:44 11 83, 1963, and its progeny and orders it to do so. The
17:31:48 12 government must make these disclosures in sufficient
17:31:51 13 time that the defendant will have reasonable opportunity
17:31:54 14 to act upon the information efficaciously, citing *United*
17:31:59 15 *States v. Rodriguez*, 496 F. 3d 221, 226 a Second Circuit
17:32:05 16 Court of Appeals decision in 2007; *Leka v. Portuondo*,
17:32:10 17 257 F. 3d 89, 98, Second Circuit 2001; and *United States*
17:32:16 18 *v. Coppa*, 267 F. 3d 132, also Second Circuit Court of
17:32:20 19 Appeals decision in 2001. Failure to do so may result
17:32:25 20 in consequences, including, but not limited to,
17:32:28 21 exclusion of evidence, adverse jury instructions,
17:32:32 22 dismissal of charges, contempt proceedings or sanctions
17:32:36 23 by the Court.
17:32:38 24 Now, realizing, Ms. Kubiak, that you and the
17:32:40 25 defendant will have had an opportunity to review the

1 USA VS. M. REGAN

17:32:47 2 additional materials that the government is going to
17:32:49 3 turn over in the forthcoming period between now and
17:32:52 4 September 30th, but knowing the nature of the charges in
17:32:55 5 this case, and I assume having knowledge of what is
17:33:00 6 going to be turned over, how much time do you think
17:33:03 7 you'll need to not only review that additional material,
17:33:06 8 but also to then prepare and file all pretrial motions
17:33:10 9 both dispositive and non-dispositive?

17:33:13 10 MS. KUBIAK: Judge, can we have 45 days.
17:33:16 11 There is a little bit of forensic evaluation that needs
17:33:19 12 to be done on the Textnow information, so that is
17:33:22 13 dependent on Mr. Grant's availability in our office. So
17:33:26 14 I think if you gave us 45 days, we can get that all
17:33:30 15 done.

17:33:31 16 MAGISTRATE JUDGE SCHROEDER: I have no
17:33:31 17 problem with that so long as the defendant agrees to
17:33:33 18 that, once again, realizing that he is detained. Does
17:33:37 19 the defendant agree to that application?

17:33:39 20 MS. KUBIAK: He does, Judge. I've explained
17:33:41 21 that to him, and I've explained Mr. Grant's availability
17:33:44 22 and the necessity for him to take a look at that
17:33:47 23 forensic information.

17:33:48 24 MAGISTRATE JUDGE SCHROEDER: All right. So
17:33:58 25 I will give the defendant until November the 12th, 2021

1 USA VS. M. REGAN

17:34:08 2 to file all pretrial motions, both dispositive and
17:34:13 3 non-dispositive.

17:34:17 4 How much time is the government going to
17:34:19 5 need to respond to any motions filed.

17:34:21 6 MS. HIGGINS: Two weeks, please. Thank you,
17:34:23 7 Judge.

17:34:25 8 MAGISTRATE JUDGE SCHROEDER: All right. Any
17:34:26 9 responses to any motions are to be filed no later than
17:34:30 10 November 26th, 2021. Let me just check my calendar here
17:34:49 11 for an oral argument date. They are going to be
17:35:30 12 updating my PC, so what does December look like? How is
17:35:41 13 December 9th?

17:35:47 14 THE CLERK: Eleven o'clock.

17:35:48 15 MAGISTRATE JUDGE SCHROEDER: December 9th,
17:35:50 16 2021 at 11 o'clock.

17:35:51 17 MS. KUBIAK: That's fine, your Honor.

17:35:52 18 MS. HIGGINS: That is fine, your Honor.

17:35:54 19 Thanks.

17:35:54 20 MAGISTRATE JUDGE SCHROEDER: All right.

17:35:55 21 Oral argument on December 9th, 2021. In the meantime,
17:36:02 22 I'm directing the government to provide a written
17:36:05 23 pre-approved plea agreement to the defendant no later
17:36:12 24 than November 12th, 2021.

17:36:25 25 MS. HIGGINS: And, Judge, just for the

1 USA VS. M. REGAN

17:36:27 2 record, the government had extended a plea to the
17:36:29 3 defendant, which he rejected.

17:36:31 4 MAGISTRATE JUDGE SCHROEDER: Was that plea
17:36:35 5 agreement pre-approved?

17:36:35 6 MS. HIGGINS: Yes, Judge.

17:36:36 7 MAGISTRATE JUDGE SCHROEDER: I'll still use
17:36:38 8 the November 12th date.

17:36:40 9 MS. HIGGINS: Sure, thank you.

17:36:43 10 MS. KUBIAK: That's correct. I provided
17:36:45 11 that plea agreement to Mr. Regan and reviewed it with
17:36:48 12 him and he has rejected that and has not indicated a
17:36:51 13 change in that position.

17:36:52 14 MAGISTRATE JUDGE SCHROEDER: Nevertheless,
17:36:53 15 should there be a change in circumstances, that November
17:36:57 16 12th date will continue to apply to the government and
17:36:59 17 I'll require the defendant to respond if there is any
17:37:03 18 change or reconsideration for the plea agreement to be
17:37:07 19 made by the defendant no later than November 23rd, 2021.

17:37:27 20 MS. HIGGINS: And, Judge, just, again, for
17:37:43 21 the record, we would likely give a different offer,
17:37:47 22 obviously, after rejecting the first and best offer, the
17:37:50 23 Government will not extend that same offer.

17:37:52 24 MAGISTRATE JUDGE SCHROEDER: I understand.

17:37:53 25 MS. HIGGINS: We'll keep that November 12th

1 USA VS. M. REGAN

17:37:55 2 date. Thank you.

17:37:56 3 MAGISTRATE JUDGE SCHROEDER: Now, if no
17:37:57 4 motions are filed by the defendant on or before November
17:38:01 5 12th, 2021, the government shall file an application
17:38:06 6 with Judge Sinatra, the district judge to whom this case
17:38:10 7 has been assigned, for purposes of setting a trial date.

17:41:45 8 MS. KUBIAK: Thank you, Judge.

17:41:46 9 MAGISTRATE JUDGE SCHROEDER: In the
17:41:46 10 meantime, Ms. Kubiak, is it the position of the
17:41:48 11 defendant that the time between now and November 12th,
17:41:53 12 2021 will in fact be utilized in such a way so as to
17:41:57 13 operate and enure to his benefit, and, therefore, such
17:41:59 14 time should be excluded for purposes of the Speedy Trial
17:42:02 15 Act?

17:42:02 16 MS. KUBIAK: Yes, your Honor.

17:42:03 17 MAGISTRATE JUDGE SCHROEDER: And, Ms.
17:42:03 18 Higgins, on behalf the government, is it the
17:42:05 19 government's position that the time between now and
17:42:07 20 November 12th, 2021 will operate in the interest of
17:42:10 21 justice in this case, and, therefore, such time should
17:42:12 22 be excluded for purposes of the Speedy Trial Act?

17:42:15 23 MS. HIGGINS: Yes, your Honor.

17:42:15 24 MAGISTRATE JUDGE SCHROEDER: Based on the
17:42:16 25 representations made by counsel for the respective

1 USA VS. M. REGAN

17:42:19 2 parties herein, I find that the time between now and
17:42:21 3 November 12th, 2021 will, in fact, be utilized in such a
17:42:26 4 way so as to operate and enure to the benefit of the
17:42:32 5 defendant as well as operate in the interest of justice
17:42:42 6 in this case in that such time is going to be utilized
17:42:45 7 to allow the government sufficient time within which to
17:42:48 8 complete the providing of voluntary discovery material
17:42:51 9 to the defendant, and, thereafter, give defense counsel
17:42:53 10 sufficient time within which to review such material as
17:42:56 11 provided. Further, such time will be utilized to allow
17:43:01 12 defense counsel sufficient time within which to prepare
17:43:05 13 in the representation of the defendant, so as to provide
17:43:07 14 the defendant with effective assistance of counsel, that
17:43:09 15 being his constitutional right, which right outweighs
17:43:13 16 the public's right or interest to a speedy trial or
17:43:16 17 disposition in this matter. For all of those reasons
17:43:19 18 then, the time is justifiably and validly excludable and
17:43:24 19 is hereby excluded pursuant to and in accordance with
17:43:28 20 the provisions contained in Title 18 of the U.S.C.
17:43:47 21 Section 3161(h)(7)(A) and 3161(h)(7)(B)(iv). Anything
17:43:51 22 further?

17:43:52 23 MS. HIGGINS: Nothing from the government,
17:43:54 24 Judge.

17:43:54 25 MS. KUBIAK: Not at this time, your Honor.

1 USA VS. M. REGAN

17:43:55 2 Thank you very much.

17:43:56 3 MAGISTRATE JUDGE SCHROEDER: Thank you.

4 * * *

5 CERTIFICATE OF REPORTER

6

7 I certify that the foregoing is a correct transcript
8 of the record to the best of my ability of proceedings
9 transcribed from the audio in the above-entitled matter.

10

11 S/ Karen J. Clark, RPR

12 Official Court Reporter

13

14

15

16

17

18

19

20

21

22

23

24

25